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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,098	01/03/2002	Bruce R. Kern	650005.94380	8661

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QUARLES & BRADY LLP
411 E. WISCONSIN AVENUE
SUITE 2040
MILWAUKEE, WI 53202-4497

EXAMINER

DAVIS, CASSANDRA HOPE

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 02/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/039,098

Applicant(s)

KERN ET AL.

Examiner

Cassandra Davis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-25 is/are allowed.
- 6) ☒ Claim(s) 26-29 is/are rejected.
- 7) ☒ Claim(s) 30-34 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 26 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 26, line 2, the phrase "the visible position" lacks antecedent basis.

In claim 27, line 2, it is unclear the phrase "a warning sign" is the same as the warning sign recited on line 1.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cassidy, Jr., U. S. Patent 5,257,595. Cassidy teaches flag system comprising a housing 20 having frame 16, side walls 18 on opposite sides of the frame, and a plurality of flags 20 slidably retained with recesses 14 of frame. The flags can be moved from a concealed position as shown in figures 1, 2, and 9 and an extended or reveal position as shown in figure 4 and 8. The flag can indicia 34 thereon visible with the flag is in the extended position. Cassidy, Jr. also teaches a mounting collar 40 for mounting the flag system on a support surface, such that the flag will extend perpendicular from the

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support surface. Although Cassidy teaches that the surface of the sidewalls can be covered with any suitable material as dictated by aesthetics, Cassidy does not specifically recite that the sidewall have indicia thereon.

4. Nevertheless, it would have been obvious to one having ordinary skill in the art at the time this invention was made to construct the sidewalls with indicia to provide a means to convey a message such as the manufacture of the flag system.

5. Claims 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glover, Jr., U. S. Patent 1,522,920. Glover teaches a signal device comprising a casing **B** having a pair of plates 4 and a plurality of target members 20-24 pivotally mounted within the casing. The targets can be moved from a concealed position to an extended or reveal position. The targets can have indicia such as numbers and letters thereon visible with the target areas in the extended position. Glover also teaches a mounting member **C** for mounting the device on a support surface, such that the targets will extend perpendicular from the support surface. (See figure 2). Glover does not specifically recite that the sidewall having indicia thereon.

6. Nevertheless, it would have been obvious to one having ordinary skill in the art at the time this invention was made to construct the sidewalls with indicia to provide a means to convey a message such as the manufacture of the flag system.

Allowable Subject Matter

7. Claims 1-25 are allowed.

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8. Claims 30-34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claim 26 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion


10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hepp, U. S. Patent 5,381,908 is cited to show an organizer for grocery shelves having a panel 104 mounted within a slot 36 in the shelf organizer. Kringel, U. S. Patent 5,083,765 is cited to show a coupon dispenser mounted on a shelf having a coupon extending perpendicular to the front edge of the shelf.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cassandra Davis whose telephone number is 703-308-2223. The examiner can normally be reached on Monday-Friday 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 703-308-0629. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.



Cassandra Davis
Primary Examiner
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CD
February 14, 2003